



POLICY BRIEF



THE CHANCE FOR CONGRESS TO SAVE LIVES

If the impending Supreme Court's ruling on *Dobbs v. Jackson Women's Health Organization* overrules *Roe v. Wade* and *Planned Parenthood v. Casey*, state legislators and Congress could have the opportunity protect the lives of millions of pre-born babies.

- ***Dobbs v. Jackson Women's Health Organization***

- The Supreme Court heard arguments in *Dobbs v. Jackson* on December 1, 2021.¹ The case concerns a Mississippi law, the Gestational Age Act, which prohibits abortion after 15 weeks of pregnancy, except in medical emergency and in cases of severe fetal abnormality.² Jackson Women's Health Organization, an abortion facility in Mississippi, filed a lawsuit to challenge the law.³
- The Supreme Court is considering the question: "Are all pre-viability bans on abortion unconstitutional?"
- The question the Court considers in *Dobbs v. Jackson* directly challenges previous court precedents in both *Roe v. Wade* and *Planned Parenthood v. Casey*. These decisions tied the hands of lawmakers desiring to protect unborn life by establishing "viability" and "undue burden" standards regarding abortion.

- **A draft opinion by Justice Alito was leaked on May 2, 2022, though the final decision has yet to be released.**

- In Justice Alito's draft opinion, the majority of the court rules that the Constitution does not confer a right to have an abortion, writing, "The inescapable conclusion is that a right to abortion is not deeply rooted in the Nation's history and traditions."⁴ He argues that *Roe* was not based on strict Constitutional interpretation, it lacked grounding in relevant law, imposed an ambiguous viability standard, and diluted other judicial standards.⁵
- He argues that *Roe* and *Casey* are both instances of raw judicial abuse and abortion policy should be returned to the legislature. He wrote, "*Roe* and *Casey* must be overruled, and the authority to regulate abortion must be returned to the people and their elected representatives."⁶

- **Some states already have measures in place protecting unborn life or expanding abortion.**

- **Pro-Life States:** 30 states have various laws limiting or prohibiting abortion that could take effect if *Roe v. Wade* is overturned—either laws that already exist, have recently been passed, or would go into effect.⁷
 - 18 states, such as Texas, Alabama, Wyoming, and Kentucky, protect life from the moment of conception.
 - Ohio, Georgia, South Carolina, and Iowa have laws that protect the unborn once a heartbeat is detected.
 - 6 states have laws restricting abortion after a certain gestational age.
 - Pennsylvania and New Hampshire have laws protecting life after the child is believed to be viable outside the mother's womb.

- **Pro-Abortion States:** 20 states and D.C. have laws establishing a right to abortion.⁸
 - 14 states require a broad “health” exception, allowing abortion until the time of birth.
 - 6 states have no laws, defaulting to allow abortions at any time for any reason.
- **If the final opinion does indeed overturn *Roe v. Wade*, abortion policy will be turned back into hands of elected representatives, not unelected judges. Congress can act to protect unborn life.**
 - Democrats are committed to allowing abortion on demand up until the time of birth. Republicans are committed to protecting life, and they have many legislative options available to do so that are not mutually exclusive.
 - Congress may pass a bill to ban abortion nationally like H.R. 1011, the Life at Conception Act, which would prohibit abortion from the moment of conception.⁹ Also, H.R. 705, the Heartbeat Protection Act of 2021 which prohibit abortion if fetal heartbeat is detectable.¹⁰
 - Congress may pass bills to impose limits on abortion. For example, H.R. 1080, the Pain-Capable Unborn Child Protection Act, would prohibit abortion after 20 weeks gestation.¹¹ H.R. 619, the Born-Alive Abortion Survivors Protection Act would require health care providers to offer life saving treatment to babies born after a failed abortion.¹² Also, H.R. 554, the SAVE Moms and Babies Act of 2021, would prohibit development of chemical abortion drugs and impose limits on current drugs.¹³

¹ Susan B. Anthony List. Supreme Court to Review Landmark Abortion Case- What's Next. May 27, 2022. <https://www.sba-list.org/scotus#whats-next>

² The Gestational Age Act, H.B. 1510. Mississippi State Legislature, (2018). <http://billstatus.ls.state.ms.us/documents/2018/pdf/HB/1500-1599/HB1510SG.pdf>

³ *Dobbs v. Jackson Women's Health Organization*. Oyez. May 26, 2022. <https://www.oyez.org/cases/2021/19-1392>

⁴ “Read Justice Alito’s Initial Draft Abortion Opinion which would Overturn *Roe v. Wade*.” May 2, 2022. <https://www.politico.com/news/2022/05/02/read-justice-alito-initial-abortion-opinion-overturn-roe-v-wade-pdf-00029504>

⁵ Ed Whelan. “Outstanding Draft Majority Opinion in *Dobbs*.” May 2, 2022. <https://www.nationalreview.com/bench-memos/outstanding-draft-majority-opinion-in-dobbs/>

⁶ “Read Justice Alito’s Initial Draft Abortion Opinion which would Overturn *Roe v. Wade*.” May 2, 2022. <https://www.politico.com/news/2022/05/02/read-justice-alito-initial-abortion-opinion-overturn-roe-v-wade-pdf-00029504>

⁷ Jennifer Calfas. “Where State Abortion Laws Stand if *Roe V. Wade* is Overturned.” May 4, 2022. https://www.wsj.com/articles/where-state-abortion-laws-stand-if-roe-v-wade-is-overturned-11651614828?mod=article_inline and Family Research Council. Pro-Life State Policy Maps. May 26, 2022. <https://frc.org/prolifemaps>

⁸ Jennifer Calfas. “Where State Abortion Laws Stand if *Roe V. Wade* is Overturned.” May 4, 2022. https://www.wsj.com/articles/where-state-abortion-laws-stand-if-roe-v-wade-is-overturned-11651614828?mod=article_inline and Family Research Council. Pro-Life State Policy Maps. May 26, 2022. <https://frc.org/prolifemaps>

⁹ Life at Conception Act, H.R. 1011, 117th Congress. 2021. <https://www.congress.gov/bill/117th-congress/house-bill/1011>

¹⁰ Heartbeat Protection Act of 2021, H.R. 705, 117th Congress. 2021. <https://www.congress.gov/bill/117th-congress/house-bill/705>

¹¹ Pain-Capable Unborn Child Act, H.R. 1080, 117th Congress. 2021. <https://www.congress.gov/bill/117th-congress/house-bill/1080>

¹² SAVE Moms and Babies Act of 2021, H.R. 554, 117th Congress. 2021. <https://www.congress.gov/bill/117th-congress/house-bill/554>

¹³ SAVE Moms and Babies Act of 2021, H.R. 554, 117th Congress. 2021. <https://www.congress.gov/bill/117th-congress/house-bill/554>